

Department of Justice

§ 58.33

signed by the signatory of the application, that makes the certifications specified in § 58.26(e).

(c) An approved provider shall not transfer or assign its United States Trustee approval to act as an approved provider.

[78 FR 16172, Mar. 14, 2013]

§ 58.32 Continuing requirements for becoming and remaining approved providers.

(a) To become an approved provider, a provider must affirmatively establish, to the satisfaction of the United States Trustee, that the provider at the time of approval:

(1) Satisfies every requirement of this part; and

(2) Provides effective instruction to its debtors.

(b) To remain an approved provider, an approved provider shall affirmatively establish, to the satisfaction of the United States Trustee, that the approved provider:

(1) Has satisfied every requirement of this part;

(2) Has provided effective instruction to its debtors; and

(3) Will continue to satisfy both paragraphs (b)(1) and (2) of this section in the future.

[78 FR 16172, Mar. 14, 2013]

§ 58.33 Minimum qualifications providers shall meet to become and remain approved providers.

To meet the minimum qualifications set forth in § 58.32, and in addition to the other requirements set forth in this part, providers and approved providers shall comply with paragraphs (a) through (n) of this section on a continuing basis:

(a) *Compliance with all laws.* A provider shall comply with all applicable laws and regulations of the United States and each state in which the provider provides an instructional course including, without limitation, all laws governing licensing and registration.

(b) *Prohibition on legal advice.* A provider shall not provide legal advice.

(c) *Ethical standards.* A provider shall:

(1) Ensure no member of the board of directors or trustees, officer or supervisor is a relative of an employee of the United States Trustee, a trustee ap-

pointed under 28 U.S.C. 586(a)(1) for any federal judicial district where the provider is providing or is applying to provide an instructional course, a federal judge in any federal judicial district where the provider is providing or is applying to provide an instructional course, or a federal court employee in any federal judicial district where the provider is providing or is applying to provide an instructional course;

(2) Not enter into any referral agreement or receive any financial benefit that involves the provider paying to or receiving from any entity or person referral fees for the referral of debtors to or by the provider; and

(3) Not enter into agreements involving an instructional course that create a conflict of interest; and

(4) Not contact any debtor utilizing the United States Postal Service, or other mail carrier, or electronic mail for the purpose of soliciting debtors to utilize the provider's instructional course, unless:

(i) Any such solicitations include the phrase "This is an advertisement for services" or "This is a solicitation;"

(ii) Prominently displayed at the beginning of each page of the solicitation;

(iii) In a font size larger than or equal to the largest font size otherwise used in the solicitation;

(iv) Any such solicitations include only logos, seals, or similar marks that are substantially dissimilar to the logo, seal, or similar mark of any agency or court of the United States government, including but not limited to the United States Trustee Program.

(d) *Instructor training, certification and experience.* A provider shall:

(1) Use only instructors who possess adequate experience providing an instructional course, which shall mean that each instructor either:

(i) Holds one of the certifications listed below and who has complied with all continuing education requirements necessary to maintain that certification:

(A) Certified as a Certified Financial Planner;

(B) Certified as a credit counselor by an accrediting organization;

(C) Registered as a Registered Financial Consultant; or

(D) Certified as a Certified Public Accountant; or

(ii) Has successfully completed a course of study or worked a minimum of six months in a related area such as personal finance, budgeting, or credit or debt management. A course of study must include training in personal finance, budgeting, or credit or debt management. An instructor shall also receive annual continuing education in the areas of personal finance, budgeting, or credit or debt management;

(2) Demonstrate adequate experience, background, and quality in providing an instructional course, which shall mean that, at a minimum, the provider shall either:

(i) Have experience in providing an instructional course for the two years immediately preceding the relevant application date; or

(ii) For each office providing an instructional course, employ at least one supervisor who has met the qualifications in paragraph (d)(2)(i) of this section for no fewer than two of the five years preceding the relevant application date; and

(iii) If offering any component of an instructional course by a telephone or Internet method of delivery, use only instructors who, in addition to all other requirements, demonstrate sufficient experience and proficiency in providing such an instructional course by those methods of delivery, including proficiency in employing verification procedures to ensure the person receiving the instructional course is the debtor, and to determine whether the debtor has completely received an instructional course.

(e) *Use of the telephone and the Internet to deliver a component of an instructional course.* A provider shall:

(1) Not provide any debtor a diminished instructional course because the debtor receives any portion of the instructional course by telephone or Internet;

(2) Confirm the identity of the debtor before commencing an instructional course by telephone or Internet by:

(i) Obtaining one or more unique personal identifiers from the debtor and assigning an individual access code, user ID, or password at the time of enrollment;

(ii) Requiring the debtor to provide the appropriate access code, user ID, or password, and also one or more of the unique personal identifiers during the course of delivery of the instructional course; and

(iii) Employing adequate means to measure the time spent by the debtor to complete the instructional course.

(f) *Learning materials and methodologies.* A provider shall provide learning materials to assist debtors in understanding personal financial management and that are consistent with 11 U.S.C. 111, and this part, which include written information and instruction on all of the following topics:

(1) Budget development, which consists of the following:

(i) Setting short-term and long-term financial goals, as well as developing skills to assist in achieving these goals;

(ii) Calculating gross monthly income and net monthly income; and

(iii) Identifying and classifying monthly expenses as fixed, variable, or periodic;

(2) Money management, which consists of the following:

(i) Keeping adequate financial records;

(ii) Developing decision-making skills required to distinguish between wants and needs, and to comparison shop for goods and services;

(iii) Maintaining appropriate levels of insurance coverage, taking into account the types and costs of insurance; and

(iv) Saving for emergencies, for periodic payments, and for financial goals;

(3) Wise use of credit, which consists of the following:

(i) Identifying the types, sources, and costs of credit and loans;

(ii) Identifying debt warning signs;

(iii) Discussing appropriate use of credit and alternatives to credit use; and

(iv) Checking a credit rating;

(4) Consumer information, which consists of the following:

(i) Identifying public and nonprofit resources for consumer assistance; and

(ii) Identifying applicable consumer protection laws and regulations, such

Department of Justice

§ 58.33

as those governing correction of a credit record and protection against consumer fraud; and

(5) Coping with unexpected financial crisis, which consists of the following:

(i) Identifying alternatives to additional borrowing in times of unanticipated events; and

(ii) Seeking advice from public and private service agencies for assistance.

(g) *Course procedures.* (1) Generally, a provider shall:

(i) Ensure the instructional course contains sufficient learning materials and teaching methodologies so that the debtor receives a minimum of two hours of instruction, regardless of the method of delivery of the course;

(ii) Use its best efforts to collect from each debtor a completed course evaluation at the end of the instructional course. At a minimum, the course evaluation shall include the information contained in Appendix E of the application to evaluate the effectiveness of the instructional course;

(2) For an instructional course delivered in person, the provider shall:

(i) Ensure that an instructor is present to instruct and interact with debtors; and

(ii) Limit class size to ensure an effective presentation of the instructional course materials;

(3) For instructional courses delivered by the telephone, the provider shall:

(i) Ensure an instructor is telephonically present to instruct and interact with debtors;

(ii) Provide learning materials to debtors before the telephone instructional course session;

(iii) Incorporate tests into the curriculum that support the learning materials, ensure completion of the course, and measure comprehension;

(iv) Ensure review of tests prior to the completion of the instructional course; and

(v) Ensure direct oral communication from an instructor by telephone or in person with all debtors who fail to complete the test in a satisfactory manner or who receive less than a 70 percent score;

(4) For instructional courses delivered through the Internet, the provider shall:

(i) Comply with § 58.33(g)(3)(iii), (iv), and (v); provided, however, that to the extent instruction takes place by Internet, the provider may comply with § 58.33(g)(3)(v) by ensuring direct communication from an instructor by electronic mail, live chat, or telephone; and

(ii) Respond to a debtor's questions or comments within one business day.

(h) *Services to hearing and hearing-impaired debtors.* A provider shall furnish toll-free telephone numbers for both hearing and hearing-impaired debtors whenever telephone communication is required. The provider shall provide telephone amplification, sign language services, or other communication methods for hearing-impaired debtors.

(i) [Reserved]

(j) *Services to debtors with special needs.* A provider that provides any portion of its instructional course in person shall comply with all federal, state and local laws governing facility accessibility. A provider shall also provide or arrange for communication assistance for debtors with special needs who have difficulty making their service needs known.

(k) *Mandatory disclosures to debtors.* Prior to providing any information to or obtaining any information from a debtor, and prior to delivering an instructional course, a provider shall disclose:

(1) The provider's fee policy, including any fees associated with generation of the certificate;

(2) The provider's policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay. To the extent an approved provider publishes information concerning its fees on the Internet, such fee information must include the provider's policies enabling debtors to obtain an instructional course for free or at reduced rates based upon the debtor's lack of ability to pay;

(3) The provider's policy to provide free bilingual instruction or professional interpreter assistance to any limited English proficient debtor;

(4) The instructors' qualifications;

(5) The provider's policy prohibiting it from paying or receiving referral fees for the referral of debtors;

(6) The provider's obligation to provide a certificate to the debtor promptly upon the completion of an instructional course;

(7) The fact that the provider might disclose debtor information to the United States Trustee in connection with the United States Trustee's oversight of the provider, or during the investigation of complaints, during on-site visits, or during quality of service reviews;

(8) The fact that the United States Trustee has reviewed only the provider's instructional course (and, if applicable, its services as a credit counseling agency pursuant to 11 U.S.C. 111(c)), and the fact that the United States Trustee has neither reviewed nor approved any other services the provider provides to debtors; and

(9) The fact that a debtor will only receive a certificate if the debtor completes an instructional course.

(l) *Complaint Procedures.* A provider shall employ complaint procedures that adequately respond to debtors' concerns.

(m) *Provider records.* A provider shall prepare and retain records that enable the United States Trustee to evaluate whether the provider is providing effective instruction and acting in compliance with all applicable laws and this part. All records, including documents bearing original signatures, shall be maintained in either hard copy form or electronically in a format widely available commercially. Records that the provider shall prepare and retain for a minimum of two years, and permit review of by the United States Trustee upon request, shall include:

(1) Upon the filing of an application for probationary approval, all information requested by the United States Trustee as an estimate, projected to the end of the probationary period, in the form requested by the United States Trustee;

(2) After probationary or annual approval, and for so long as the provider remains on the approved list, semi-annual reports of historical data (for the periods ending June 30 and December 31 of each year), of the type and in the form requested by the United States Trustee; these reports shall be submitted within 30 days of the end of the

applicable periods specified in this paragraph;

(3) Records concerning the delivery of services to debtors with limited English proficiency and special needs, and to hearing-impaired debtors, including records:

(i) Of the number of such debtors, and the methods of delivery used with respect to such debtors;

(ii) Of which languages are offered or requested, and the type of language support used or requested by such debtors (e.g., bilingual instructor, in-person or telephone interpreter, translated Web instruction);

(iii) Detailing the provider's provision of services to such debtors; and

(iv) Supporting any justification if the provider did not provide services to such debtors, including the number of debtors not served, the languages involved, and the number of referrals provided;

(4) Records concerning the delivery of an instructional course to debtors for free or at reduced rates based upon the debtor's lack of ability to pay, including records of the number of debtors for whom the provider waived all of its fees under § 58.34(b)(1)(i), the number of debtors for whom the provider waived all or part of its fees under § 58.34(b)(1)(ii), and the number of debtors for whom the provider voluntarily waived all or part of its fees under § 58.34(c);

(5) Records of complaints and the provider's responses thereto;

(6) Records that enable the provider to verify the authenticity of certificates their debtors file in bankruptcy cases; and

(7) Records that enable the provider to issue replacement certificates.

(n) *Additional minimum requirements.* A provider shall:

(1) Provide records to the United States Trustee upon request;

(2) Cooperate with the United States Trustee by allowing scheduled and unscheduled on-site visits, complaint investigations, or other reviews of the provider's qualifications to be an approved provider;

(3) Cooperate with the United States Trustee by promptly responding to questions or inquiries from the United States Trustee;

(4) Assist the United States Trustee in identifying and investigating suspected fraud and abuse by any party participating in the instructional course or bankruptcy process;

(5) Take no action that would limit, inhibit, or prevent a debtor from bringing an action or claim for damages against a provider, as provided in 11 U.S.C. 111(g)(2);

(6) Refer debtors seeking an instructional course only to providers that have been approved by a United States Trustee to provide such services;

(7) Comply with the United States Trustee's directions on approved advertising, including without limitation those set forth in Appendix A to the application;

(8) Not disclose or provide to a credit reporting agency any information concerning whether a debtor has received or sought instruction concerning personal financial management from a provider;

(9) Not expose the debtor to commercial advertising as part of or during the debtor's receipt of an instructional course, and never market or sell financial products or services during the instructional course provided, however, this provision does not prohibit a provider from generally discussing all available financial products and services;

(10) Not sell information about any debtor to any third party without the debtor's prior written permission;

(11) Comply with the requirements elsewhere in this part concerning fees for the instructional course and fee waiver policies; and

(12) Comply with the requirements elsewhere in this part concerning certificates.

[78 FR 16172, Mar. 14, 2013]

§ 58.34 Minimum requirements to become and remain approved providers relating to fees.

(a) If a fee for, or relating to, an instructional course is charged by a provider, such fee shall be reasonable:

(1) A fee of \$50 or less for an instructional course is presumed to be reasonable and a provider need not obtain prior approval of the United States Trustee to charge such a fee;

(2) A fee exceeding \$50 for an instructional course is not presumed to be reasonable and a provider must obtain prior approval from the United States Trustee to charge such a fee. The provider bears the burden of establishing that its proposed fee is reasonable. At a minimum, the provider must demonstrate that its cost for delivering the instructional course justifies the fee. A provider that previously received permission to charge a higher fee need not reapply for permission to charge that fee during the provider's annual review. Any new requests for permission to charge more than previously approved, however, must be submitted to EOUST for approval; and

(3) The United States Trustee shall review the amount of the fee set forth in paragraphs (a)(1) and (2) of this section one year after the effective date of this part and then periodically, but not less frequently than every four years, to determine the reasonableness of the fee. Fee amounts and any revisions thereto shall be determined by current costs, using a method of analysis consistent with widely accepted accounting principles and practices, and calculated in accordance with the provisions of federal law as applicable. Fee amounts and any revisions thereto shall be published in the FEDERAL REGISTER.

(b)(1) A provider shall waive the fee in whole or in part whenever a debtor demonstrates a lack of ability to pay the fee.

(i) A debtor presumptively lacks the ability to pay the fee if the debtor's household current income is less than 150 percent of the poverty guidelines updated periodically in the FEDERAL REGISTER by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2), as adjusted from time to time, for a household or family of the size involved in the fee determination.

(ii) The presumption shall be rebutted, and the provider may charge the debtor a reduced fee, if the provider determines, based on income information the debtor submits to the provider, that the debtor is able to pay the fee in a reduced amount. Nothing in this subsection requires an provider to charge